

CHAPTER 180
FORMERLY
HOUSE BILL NO. 208

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE DELAWARE HAZARDOUS SUBSTANCE CLEANUP ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 9103, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9103. Definitions.

As used in this chapter:

(6) “Contractual relationship” means, but is not limited to, land contracts, deeds, easements, leases or other instruments transferring title or possession. A “contractual relationship” does not exist if the real property on which the facility concerned is located was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and 1 or more of the circumstances described in paragraph (6)a., b., or c. of this section is also established by the person by a preponderance of the evidence:

a. At the time the person acquired the facility the person did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in or at the facility.

~~b. The person is a government entity which acquired the facility by escheat or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.~~

b. The person is any of the following:

1. A state, county, or municipal government entity which acquired the facility through seizure or otherwise in connection with law enforcement authority, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government entity acquired title or control by virtue of the exercise of its lawful governmental authority.

2. A land bank created pursuant to the provisions of Chapter 47 of Title 31, The Delaware Neighborhood Conservation and Land Banking Act, which acquired the facility in accordance with the requirements of the Act.

c. The person acquired the facility by inheritance or bequest.

(20) “Owner or operator” means:

a. Any person owning or operating a facility.

b. Any person who owned, operated, or otherwise controlled activities at a facility.

c. The term “owner or operator” does not include ~~an agency of the State or unit of local government that acquired title or control involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances.~~ any of the following:

1. An agency of the State or unit of local government that acquired title or control through bankruptcy, tax delinquency, abandonment or other circumstances by which it exercised its lawful governmental authority.

2. A land bank created pursuant to the provisions of Chapter 47 of Title 31, The Delaware Neighborhood Conservation and Land Banking Act, which acquired the facility in accordance with the requirements of the Act.

d. The term “control” does not include regulation of the activity by a federal, state or local government agency.

e. The term “owner or operator” does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect that person’s security interest in the facility.

f. The term “owner or operator” does not include a person who, without acquiring legal title, conducts or directs activities in connection with the actual or potential acquisition or evaluation of a facility, including due diligence, site inspections, site assessments, or other pre-closing activities in connection with the acquisition of a facility.

Approved July 31, 2019